

ESTTA Tracking number: **ESTTA90939**

Filing date: **07/20/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91167207
Party	Plaintiff MS. ANITA DHALIWAL
Correspondence Address	R. JOSEPH TROJAN TROJAN LAW OFFICES 9250 WILSHIRE BLVD SUITE 325 BEVERLY HILLS, CA 90212 trojan@trojanlawoffices.com
Submission	Other Motions/Papers
Filer's Name	YeWon Min
Filer's e-mail	min@trojanlawoffices.com,trojan@trojanlawoffices.com
Signature	/yewon min/
Date	07/20/2006
Attachments	Mot Reconsideration.pdf (4 pages)(113351 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ANITA DHALIWAL, an Individual

Opposer,

v.

DVD WORLD PICTURES CORP.

Applicant.

Opposition No. 91167207

Re: DVD WORLD

Serial No.: 78495856

**MOTION FOR
RECONSIDERATION**

CERTIFICATE OF TRANSMISSION

I hereby certify that this paper is being transmitted to the Trademark Trial and Appeal Board via ESTTA on the date shown below:

YeWon Min

Date

/YeWon Min/

July 20, 2006

Motion for Reconsideration

Opposer Anita Dhaliwal respectfully moves the Board to reconsider its decision in denying Opposer's Motion for Summary Judgment ("Motion for Summary Judgment") filed July 17, 2006 and find Opposer to have timely filed her Motion, or, in the alternative, to exercise the Board's discretionary powers to allow the filing of the Motion one day late.

Opposer's Motion Was Timely Filed

Opposer notes the Board's decision is based upon Trademark Rule 2.127(e), which states that a Motion for Summary Judgment must be filed before the opening of the testimony period. In the proceeding at hand, the testimony period opened on July 17, 2006. If July 16 is a business day, then Opposer's filing of its motion would be untimely.

However, Opposer submits that its Motion for Summary Judgment was timely filed on Monday, July 17, 2006, in light of the fact that the last day before the opening of the testimony period was Sunday, July 16. Opposer relies upon 37 C.F.R. § 2.196, which states in relevant part as follows:

37 CFR § 2.196 Expiration on Saturday, Sunday or Federal holiday
When the day, or the last day fixed by statute or regulation by or under this part for taking any action or paying any fee in the Office falls on a Saturday, Sunday or Federal holiday within the District of Columbia of Columbia, the action may be taken, or the fee paid, on the next succeeding day that is not a Saturday, Sunday or a Federal holiday.

The Trademark Trial and Appeal Board specifically allows papers to be filed and action to be taken on the following day where the last day for taking action falls on a Saturday, Sunday, or Federal holiday. *See* TBMP §112. Opposer notes that the examples listed by the Trademark Trial and Appeal Board Manual of Procedure applicable under §112 includes pleadings filed, discovery served, and other action taken. *Id.* Accordingly, Opposer submits that it timely filed its Motion for Summary Judgment on July 17, 2006 as the last day to file the Motion fell on Sunday, July 16, 2006.

Balance of Equities Favors Opposer's Summary Judgment Motion

In the alternative, Opposer respectfully requests the Board in its discretion to allow a one-day extension of time to file the Motion for Summary Judgment. The Board has the discretion to accept or deny motions filed untimely. Trademark Rule 2.127(e). As the purpose of summary judgment is to conserve Board resources, Opposer submits that the balance of equities favors the allowance of Opposer's Motion to be filed.

The purpose of summary judgment is to conserve Board resources. TBMP 528.01 states:

The motion for summary judgment is a pretrial device to dispose of cases in which "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." [footnote omitted] The purpose of the motion is judicial economy, that is, to avoid an unnecessary trial where there is no genuine issue of material fact and more evidence than is already available in connection with the summary judgment motion could not reasonably be expected to change the result in the case.

Given the purpose of a summary judgment motion is judicial economy, Opposer submits that on the balance of equities the extension of the time to file summary judgment by one day is in favor of the summary judgment motion, especially as no prejudice results to the Applicant in extending the summary judgment filing date by one day. Opposer respectfully requests the Board to use its discretionary powers to allow the Opposer to have filed its summary judgment papers one day late. *See* Trademark Rule 2.127 (e). Opposer is amenable to having the Applicant file its response to summary judgment as of the date the Board approves the filing of the motion for summary judgment.

In light of the above, Opposer respectfully requests the Interlocutory Attorney to reconsider his decision denying Opposer's Motion for Summary Judgment.

Date: July 20, 2006

Respectfully submitted,

/YeWon Min/
R. Joseph Trojan
YeWon Min
Trojan Law Offices
9250 Wilshire Blvd., Suite 325
Beverly Hills, CA 90212

Attorneys for Opposer
Anita Dhaliwal

PROOF OF SERVICE

I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the above entitled action. My business address is 9250 Wilshire Blvd., Suite 325, Beverly Hills, California 90212.

On July 20, 2006, I served:

MOTION FOR RECONSIDERATION

by transmitting to:

Christine M. Baker, Esq.

MINTZ LEVIN COHN FERRIS GLOVSKY and POPEO, PC

666 Third Ave.

New York, NY 10017

Fax 212-983-3115

[X] BY FACSIMILE: I caused a copy of such document to be sent via facsimile machine to the office of the addressee(s) at the phone number shown above.

[X] BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Beverly Hills, California, in the ordinary course of business. I am aware that on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown on this proof of service.

[X] FEDERAL: I declare, under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 20, 2006, at Beverly Hills, California.

_____/YeWon Min/

YeWon Min